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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

JUL 28 1997

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
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Toll Free Service Access Codes) CC Docket No. 95-155

FURTHER REPLY COMMENTS OF TLDP COMMUNICATIONS, INC.

TLDP Communications, Inc. ("TLDP"), by its counsel, hereby files these further reply comments in the above-captioned docket, pursuant to the Commission's Public Notice of July 2, 1997, 62 Fed Reg. 364 (July 8, 1997). In its Public Notice, the Commission has requested parties to refresh the record in this proceeding on issues associated with the treatment of vanity numbers, both with 888 as well as numbers in future toll free codes.

In its original Comments and Reply Comments in this proceeding TLDP urged the Commission to extend to current 800 number holders a right of first refusal for equivalent numbers in the 888 NPA, balanced with reasonable economic incentives to promote the efficient and equitable use of toll free numbers in the future. In deference to the Commission's desire to have parties avoid reiterating their earlier filings, TLDP confines its supplemental reply comments to endorsing the proposals by New England 800 Company ("New England 800") for the partitioning of toll free services between individuals, paging and other "one-to-one" users, on the one hand, and business "many-to-one" users, on the other.

In its initial Comments, a copy of which is attached hereto, TLDP observed that the

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primary cause of 800 number exhaustion has been the use of numbers for services which require a toll free, but not necessarily 800, number, particularly paging and residential 800 services. TLDP urged the Commission to forego imposing a fee for the exercise of a right of first refusal and to instead develop incentives which will encourage the partition of 800 numbers, as discussed at paragraph 46 in its Notice of Proposed Rulemaking.¹

In its Further Comments, New England 800 addresses this same concern by asking the Commission to reserve one or more new toll free prefixes for the exclusive use by individuals, or by businesses whose use of toll free numbers is primarily a "one-to-one" application, i.e., applications where toll-free numbers 'point' to pagers, cell-phones, home telephone numbers, and the like." Further Comments of New England 800, p. 2. New England 800 further urges the Commission to phase in the requirement that all current toll-free numbers pointing to pagers, cellular phones, home telephone numbers and the like be changed from existing 800 or 888 prefixes to new toll-free numbers with one of the newly assigned prefixes. Finally, New England 800 urges the Commission to set aside current 800 and 888 prefixes for the exclusive use of businesses which reasonably demonstrate that the toll free number under consideration will be used primarily for communication by customers and prospects of that business, i.e., for "many-to-one" applications. Id. at pp. 2, 3.

TLDP wholly concurs with these proposals. Such partitioning would further the public interest by rationally promoting the efficient and equitable use of toll free numbers without unreasonably discriminating against any particular class of carrier. The continued

¹ Toll Free Service Access Codes, 11 FCC Rcd 13692, 13704 (1995).

availability of toll free 800 and 888 vanity numbers would be preserved for those entities who use them most frequently and efficiently and for whom they are most critical -- i.e., commercial businesses. While residential and pager users may experience some degree of inconvenience by the switching of their NPA, such a change would not have the same detrimental impact as on businesses who have incorporated numbers into their marketing plans would experience, and would be no more disruptive than other recent NPA splits which many areas of the country have witnessed, resulting in telephone numbers being changed for millions of users.

WHEREFORE, TLDP Communications, Inc. respectfully urges the Commission to follow the recommendations set forth in its initial Comments and Reply Comments in this proceeding, and as set forth above.

Respectfully submitted,

TLDP COMMUNICATIONS, INC.

By: 
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July 28, 1997

Before the
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In the Matter of
Toll Free Service Access Codes

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CC Docket No. 95-155

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FEDERAL COMMUNICATIONS COMMISSION
CITIZENSHIP DIVISION

INITIAL COMMENTS OF TLDP COMMUNICATIONS, INC.

TLDP Communications, Inc. ("TLDP"), by its attorney, hereby submits these comments in response to the Notice of Proposed Rulemaking ("Notice") in the above-captioned proceeding, released October 5, 1995.¹ For the reasons stated below, the Commission should permit 800 users to exercise a Right of First Refusal with respect to the opening of the 888 NPA, and institute economic incentives to spur the voluntary partition of toll free NPAs between those customers who require an 800 number and those who do not.

I. An Unlimited Right of First Refusal Will Not Have Any Adverse Impact on the Availability of Toll Free Numbers

TLDP applauds the Commission's efforts to ensure that toll free numbers are used in an efficient manner, and its proposal to afford to current holders of 800 numbers a "right of first refusal" to receive equivalent 888 numbers. Such an approach balances well the competing considerations identified by the Commission in its Notice, para. 35, and has the broad support of numerous 800 subscribers who have invested considerable resources in connection with their numbers. Id. at fn. 75.

In this regard, TLDP rejects the suggestion that denying existing 800 customers a "Right of First Refusal" to reserve identical numbers in future toll free service codes may increase the amount

¹ TLDP is engaged in the marketing of 800 and associated interactive voice response services. Many of its customers employ the use of 800 services. As a result, TLDP has a direct interest in the outcome of this rulemaking.

of toll free numbers available, thereby extending the life of what is referred to as "a limited resource." Unfortunately, that is not the case.

Denying, or limiting, a Right of First Refusal will not only affect the amount of 888 (or other service code) numbers available on the first day that such a code is opened. If there is no Right of First Refusal, every 800 customer who would have exercised such a right will request its carrier to reserve the corresponding 888 number on the first day that the code is opened. In short, within a matter of days (depending on the ability of the SMS database to process the requests with which it will be inundated), all numbers which would have been reserved will be issued.

In point of fact, the choice is not really between balancing "goodwill and the holder's interest in a vanity number against the need to manage a limited resource." Notice, para. 35. Rather, the true balance is between goodwill (frequently developed at considerable expense) and a flood of unfair competition and trademark litigation which is likely to develop if holders of 800 numbers are not given an opportunity to exercise a Right of First Refusal.

As there is no effective way of preventing the reservation of choice 888 numbers once the service code has been opened, there is no benefit to be achieved by refusing to allow the requested Right of First Refusal. To the contrary, the public interest in minimizing litigation demands recognition of the rights of existing 800 number holders.

II. The Percentage of "Vanity" 800 Numbers Has Been Substantially Exaggerated

In its Notice, the Commission asks parties to identify the total number of existing vanity numbers or a method for ascertaining how many numbers are or should be regarded as vanity numbers. Notice, para. 40. A brief mathematical analysis indicates that the number of vanity 888 numbers likely to be reserved by the holders of corresponding 800 numbers is relatively small.

1. There are no letters associated with the digits 0 and 1 on the telephone dial. Accordingly, true "vanity" numbers may only contain the eight digits 2 through 8.

2. Of the 8,000,000 numbers available in any given toll free NPA, the number which can correspond to seven letters is 8 to the seventh power, or 2,097,152 -- 25%. As is well known to any Scrabble player, however, not all combinations of letters form words. In fact, the overwhelming majority do not. As a result, the number of seven digit vanity numbers is nearly certainly less than 10 percent of the numbers available.

3. Even if one makes the questionable assumption that the first three digits of a vanity number can be numbers, as long as the last four digits spell something, the number of possible letter combinations in any given three digit office code is limited to 8 to the 4th power, or 4096 -- 41%. Again, when one takes into account the fact that most four letter combinations do not spell anything, even under this extremely liberal definition, the percentage of vanity numbers is likely to be under 20%, and probably less than 10%.

III. Inefficient Use of Toll Free Resources Can Be Prevented by Economic Incentives

While denial of the Right of First Refusal is not likely to have any impact on the preservation of toll free numbering resources, there is another approach that could -- institution of economic incentives which induce holders of 800 numbers who do not require them to migrate to 888 or another office code.

As has been noted in industry forums over the past 12 months, the primary cause of 800 number exhaustion has been the use of the numbers for services which require a toll free, but not necessarily 800, number, particularly paging and residential 800 services. Rather than impose a fee for the exercise of a Right of First Refusal, Notice at para. 41, the Commission should develop

incentives which will encourage the partition of 800 services, as discussed in para. 46 of the Notice.

TLDP offers two suggestions for accomplishing this objective:

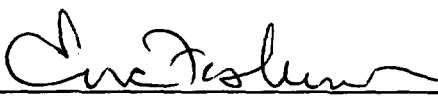
1. Increase the \$0.70/month SMS fee for 800 numbers to \$2.00 or \$3.00 per month, and apply it only to 800 numbers; waiving the fee for 888 and other toll free NPAs;
2. Require providers of 800 service to structure their rates so that 800 service requires a minimum monthly fee, while exempting all other toll free NPAs. The fee would not have to be high -- as little as \$5 to \$10 per month would discourage the overwhelming majority of paging and residential customers from opting for an 800 number. Moreover, carriers are likely to welcome such a move, for it would enable them to develop separate packages for the residential, paging and commercial markets. To avoid discrimination, carriers should be required to make both options available to all 800 users. In practice, however, the overwhelming majority of residential and paging customers are likely to choose non-800 numbers, as well as many commercial users of 800 services.

IV. Conclusion

For the reasons stated above, TLDP respectfully urges the Commission to permit 800 users to exercise a Right of First Refusal with respect to the opening of the 888 NPA, and to institute economic incentives to spur the voluntary partition of toll free NPAs between those customers who require an 800 number and those who do not.

Respectfully submitted,

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November 1, 1995

CERTIFICATE OF SERVICE

I, Eric Fishman, do hereby certify on this 28th day of July, 1997, that a copy of the foregoing Further Reply Comments of TLDP Communications, Inc. in CC Docket No. 95-155, was served upon the parties listed below, via first class mail, postage pre-paid.

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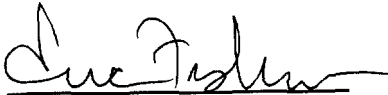
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